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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/658,135	09/08/2003	Harold M. Aznoian	B0751/7024	5402
22832	7590	08/26/2004	EXAMINER	
KIRKPATRICK & LOCKHART LLP 75 STATE STREET BOSTON, MA 02109-1808			FLANAGAN, BEVERLY MEINDL	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 08/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/658,135	Applicant(s) AZNOIAN ET AL.	
	Examiner Beverly M. Flanagan	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.
 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 11 and 12 is/are rejected.
- 7) ☒ Claim(s) 4-10 is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Beverly M. Flanagan
BEVERLY M. FLANAGAN
PRIMARY EXAMINER

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____. |

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DETAILED ACTION

Claim Objections

Claims 2 and 9 are objected to because of the following informalities: In claim 2, line 3, "section" should be "suction" and "accessor" should be "accessory"; In claim 9, line 3, "access" should be "axis". Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 are rejected under 35 U.S.C. 102(a) as being anticipated by Arai et al. (U.S. Patent No. 6,689,130).

In regard to claim 1, Arai et al. teach an endoscope and incising apparatus 1 comprised of a shaft 4 having a hood 2 integrated at its distal end, a line 20 that extends the length of the endoscope for attachment to an incision line 15 and a connection terminal 32 mounted at the proximal end of the endoscope for controlling the line 20 and incision line 15 (see Figures 1 and 2). **In regard to claims 2 and 3**, Figure 2 shows that hood 2 had a cutout portion 7 comprising a suction port and incising line 15 constitutes a needle that is longitudinally slidable through the endoscope to penetrate tissue aspirated into the cutout portion 7. Figure 2 also shows that, as broadly as claimed, hood 2 mounts over a reduced diameter portion of the endoscope.

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Claims 1, 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Ouchi (U.S. Patent No. 5,897,487).

In regard to claim 1, Ouchi teaches an endoscope with an insertion section 6 having a treatment tool insertion channel 2 through which is passed a ligature loop wire 10 (see Figures 1 and 3). An operating wire 22 passing through the endoscope controls movement of the loop wire 10 and is mounted at the proximal end of the endoscope (see Figure 1). **In regard to claim 11**, Figure 8 and 9 demonstrate how loop wire 10 grasps tissue and pulls it into hood 3. **In regard to claim 12**, see Figures 8 and 9 and col. 4, lines 52-65.

Allowable Subject Matter

Claims 4-10 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

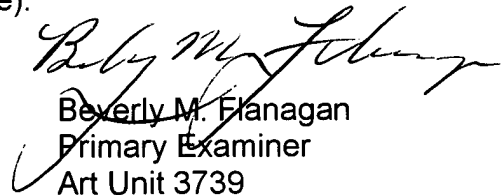
The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant should note the following prior art references disclosing treatment accessories for endoscopes having suction and tissue penetration capabilities: Adams, U.S. Patent No. 6,629,630; Page et al., U.S. Patent Application Publication No. 2003/0171651 and Chung et al., U.S. Patent No. 6,719,763.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beverly M. Flanagan whose telephone number is (703) 305-7202. The examiner can normally be reached on Mondays, Wednesdays and Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (703) 308-0994. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Beverly M. Flanagan
Primary Examiner
Art Unit 3739
